FILE COPY.

Office Supreme Court U. S.
FILED
MAR 14 1904
JAMES H. McKENNEY,
Clerk.

3 Orig'l.
O. T. 1906

In the Supreme Court of the United States.

OCTOBER TERM, 1906

THE STATE OF KANSAS, complainant,
v.
THE STATE OF COLORADO ET AL., defendants. } No. 3 Original.

NOTICE OF MOTION ON BEHALF OF THE UNITED STATES FOR LEAVE TO INTERVENE.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE STATE OF KANSAS, complainant, *v.* THE STATE OF COLORADO ET AL., defendants. } No. 7. Original.

NOTICE OF MOTION ON BEHALF OF THE UNITED STATES FOR LEAVE TO INTERVENE.

To the State of Kansas, complainant in the above-entitled suit, and to the State of Colorado, The Bessemer Ditch Company, The Oxford Farmers' Ditch Company, The Otero Canal Company, The Laguna Company (in the amended bill of complaint by mistake called The Lake Canal Company), The Riverside Ditch Company, The Catlin Consolidated Canal Company, The Graham Ditch Company, The Lamar Land and Canal Company, The Amity Canal and Reservoir Company, The Rocky Ford Canal, Reservoir, Land, Loan, and Trust Company, The Fort Lyon Canal Company, The Colorado Land and Canal Company, The Great Plains Water Company, The Arkansas Valley Sugar-beet and Irrigated Land Company, The Colorado Fuel and Iron Company, and The Bent-Otero Improvement Company, defendants therein:

You, and each of you, are hereby notified that on Monday, March 14, 1904, the Attorney-

General of the United States will, on behalf of the United States, move the above court for leave to intervene in the above-entitled cause and for such purpose to file therein its petition. A copy of said proposed motion and petition are herewith attached.

P. C. KNOX,
Attorney-General.

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MOTION ON BEHALF OF THE UNITED STATES FOR LEAVE TO INTERVENE.

The Attorney-General, on behalf of the United States, moves the court for leave to intervene in the above-entitled cause, and for such purpose to file therein its petition, a copy of which is attached hereto, marked "A."

As cause for this motion it is shown—

1. The cause presents several questions of law of general public interest, the determination of which will affect the public domain of the United States and the navigability of interstate streams.

2. The cause presents several questions of law, the determination of which will affect the administration and enforcement of several acts of Congress, and especially the so-called Reclamation Act of June 17, 1902 (32 Stat., 388).

3. The United States owns several thousands of acres of arid lands in Colorado and Kansas, within the watershed of the Arkansas River, which will be vitally affected by the determination of the questions of law involved in said cause.

4. The questions of law presented in said cause are of such character that their determination will vitally affect the interests of the United States and the general welfare.

P. C. KNOX,
Attorney-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1906

THE STATE OF KANSAS, complainant,
v.
THE STATE OF COLORADO ET AL., defendants.

No. 3 Original.

PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES.

P. C. KNOX,
Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE STATE OF KANSAS, complainant,
v.
THE STATE OF COLORADO ET AL., defendants.
} No. 7. Original.

PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES.

To the honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the United States of America, by Philander C. Knox, Attorney-General, and by leave of the court first had and obtained files this its petition of intervention in the above-entitled cause, and alleges and shows as follows:

1. That the Arkansas River mentioned and described in complainant's bill of complaint is a natural stream of water and has its rise and source in the Rocky Mountains, in the State of Colorado; thence flows through said State in a southeasterly and easterly direction for approximately 280 miles to a point on the boundary line which separates Kansas and Colorado, near the thirty-eighth degree north latitude, at which point it enters the

State of Kansas; thence flows easterly, southeasterly, northeasterly, and southeasterly through the last-named State, a distance of about 310 miles to a point about 6 miles east of the ninety-seventh degree west longitude, where it enters the Territory of Oklahoma; thence flows through said Territory, the Indian Territory, and the State of Arkansas, and enters into the Mississippi River at the eastern boundary of said State. That said stream is not navigable in the States of Colorado and Kansas and the Territory of Oklahoma, but is navigable in the State of Arkansas and in the Indian Territory.

2. That all the lands lying within the watershed of said stream west of the ninety-ninth degree longitude are situated in what is known as the Arid Region of the United States—that is, within that part of the United States where the normal annual rainfall is not sufficient to supply the moisture necessary to enable the soil to produce by cultivation agricultural or other crops in paying quantities.

3. That within the watershed of said stream west of the ninety-ninth degree longitude there are about 1,000,000 acres of lands belonging to the United States which are now uninhabitable, unproductive, and unsalable, for the reason that the normal annual rainfall does not supply sufficient moisture to enable the soil to produce crops in paying quantities.

4. That only by means of irrigation—that is, by taking and diverting the waters of said stream and its tributaries, or by impounding and storing the flood and other waters arising in said watershed, and conducting the waters so taken, diverted, impounded, and stored to and upon the lands in said watershed so owned by the United States—can any of said lands be reclaimed from their arid condition, rendered inhabitable and salable, and made to produce crops in paying quantities.

5. That because of the insufficient rainfall in the arid region to supply the moisture necessary to render the soil capable of producing crops in paying quantities, and for the reason that the lands in said arid region can only be made to produce crops in such quantities by irrigation, the common-law doctrine of riparian rights has, by usage and custom of the inhabitants in said region, and by statute law of some of the States and Territories in which the arid region is situated, been abrogated, and in lieu thereof there has grown up and been established the doctrine that the waters of natural streams, also the flood and other waters in said region, may be impounded, appropriated, diverted, and used for the purpose of reclaiming and irrigating the arid lands therein, and for other lawful and beneficial purposes; and that the prior appropriation of such waters, followed by the continuous use for and application to the purposes named, gives a right in and to the waters appropriated superior to any right or rights asserted or

claimed by the owner or owners of riparian lands bordering on the stream from which the appropriation is made or in which said waters would otherwise flow, and superior to any right or rights claimed or asserted under any and all subsequent appropriations of said waters.

6. That it would seem, from Congressional legislation, from the decisions of this court and from executive acts, the United States has sanctioned and approved the aforesaid usage, custom, and statute law respecting the abrogation of the common-law doctrine of riparian rights, and respecting the doctrine of the appropriation and use of waters for irrigation and other beneficial purposes, and has recognized that the common-law doctrine of riparian rights is inapplicable to the public lands owned by it in the arid region, and as applicable thereto has approved the doctrine in respect to the appropriation and use of water for irrigation and other beneficial purposes, provided such appropriation and use does not tend to destroy or interfere with the navigability of the streams into which such waters flow.

7. That in accordance with and in reliance upon the above-mentioned recognized doctrine respecting the appropriation and use of waters for irrigation and for other beneficial purposes, the inhabitants of the arid region in the United States have, by appropriating and using upon the arid lands the waters of natural streams, also flood and other waters, reclaimed and made productive

and profitable not less than 10,000,000 acres of land, which now provide homes for and support a population of several millions; that in accordance with and in reliance upon said doctrine the inhabitants of Colorado and Kansas, within the watershed of the Arkansas River, by appropriating and using upon the lands within said watershed the waters of said river and its tributaries, have reclaimed and made productive and profitable about 200,000 acres of land, which have provided and now provide homes for and support a population of many thousands.

8. That the common-law doctrine of riparian rights is inapplicable to riparian lands within the arid region; for if such doctrine were held to be applicable to riparian lands in said region, and enforced, the lands in said region belonging to the United States would forever remain uninhabitable, unproductive, and unsalable, and the area of ten million acres now irrigated therein, and supporting a population of several million people must be deprived of water for irrigation and be returned to its original desert condition; that only by the application to the lands in both public and private ownership in the arid region of the doctrine in respect to the appropriation and use of the waters of natural streams, of flood and other waters, for irrigation and other beneficial purposes, can such lands continue productive and additional large areas be reclaimed and rendered inhabitable, productive, and salable.

9. Acting upon the assumption that only the doctrine respecting the appropriation and use of the waters of natural streams and of flood and other waters, for irrigation and other beneficial purposes, was applicable to the public lands in said region, Congress passed an act, which was approved by the President June 17, 1902 (32 Stat., 388), commonly called and hereinafter referred to as the "Reclamation Act," the object, intent, and purpose of which act is to promote the interests of the United States and to enhance the general welfare by providing the means whereby reservoirs and dams may be erected and maintained by the United States in the arid region to catch, store, and impound the unappropriated waters of the natural streams in said region, and the flood and other waters arising within the watersheds of said streams, to the end that said waters may be used to reclaim, render inhabitable and salable, and make productive and profitable the lands now belonging to the United States within the arid region and other lands in private ownership in said region which could not otherwise be used to raise agricultural crops.

10. That not less than 60,000,000 acres of land belonging to the United States within the arid region, which are now uninhabitable, unproductive, and unsalable, can be reclaimed and rendered inhabitable, productive, and salable, provided that under said act reservoirs and dams are erected and maintained to catch, store, and impound the unap-

propriated waters of natural streams in said region, and to catch, store, and impound the flood and other waters therein, and provided such waters when stored and impounded are conducted to and used upon such arid lands as by said act intended.

11. That the amount of land now owned by the Government which can be so reclaimed and made inhabitable, productive, and salable will, when so reclaimed, provide homes for and support a population of many millions.

12. That within the watershed of the Arkansas River, west of the ninety-ninth degree west, about 100,000 acres of land, belonging to the Government, which are now uninhabitable, unproductive, and unsalable, can be reclaimed and rendered inhabitable, productive, and salable, provided reservoirs and dams are erected and constructed to catch, store, and impound the unappropriated waters of said river, as above described, and the flood and other waters arising within its watershed; and provided such waters, when so stored and impounded, are conducted and used upon said lands for the purpose of reclaiming and irrigating the same.

13. That the lands situated in said watershed west of the ninety-ninth meridian west, which can be so reclaimed and irrigated, will, when so reclaimed and irrigated, be capable of supporting a population of not less than 50,000.

14. That the officers of the United States whose duty it is to administer said act and to enforce its provisions are now endeavoring to carry it into

effect, and have already expended about $1,000,000 in exploring for, selecting, procuring, and setting apart sites upon which reservoirs and dams contemplated by the act can be constructed and maintained; that said officers have let contracts, under the provisions of said act, for the erection and construction of reservoirs and dams which, when completed, will cost over $2,000,000 and will have a storage capacity of water sufficient to reclaim and make productive, inhabitable, and salable not less than 500,000 acres of the arid lands belonging to the United States, which land, when so reclaimed, will sustain a population of not less than 250,000; and that by surveys and investigations already made under said Reclamation Act plans of irrigation are under consideration for the irrigation of about 1,000,000 acres more of arid public lands, at a probable cost of over $20,000,000.

15. That there is now available, under the provisions of said act, the sum of more than sixteen millions ($16,000,000) of dollars, for the procuring, selecting, and setting apart of reservoir sites and for the constructing and maintaining of reservoirs and dams; and that the proceeds from the disposal of public lands will add to the fund at the rate of several millions of dollars per year.

16. That the State of Kansas, in and by its amended bill of complaint herein, claims that it owns riparian lands in the valley of said Arkansas River, in said State, and as such riparian owner contends that it is entitled to a decree compelling

the State of Colorado and its inhabitants to permit all the waters of the Arkansas River within the State of Colorado to flow into the State of Kansas uninterrupted, unimpeded, and undiminished. That such contention on the part of said State in effect challenges the validity of the doctrine which prevails in the arid region in respect to the waters of natural streams, and of flood and other waters, which doctrine the Government of the United States has sanctioned and approved, and the maintenance of which is essential to the interests of the United States and the general welfare of the citizens thereof.

17. That the State of Colorado, in and by its answer to the complainant's amended bill of complaint, contends that all the waters of the Arkansas River and its tributaries, and all the waters within the watershed of said river from whatsoever source arising in said State, belong to it in its sovereign capacity; and that as such owner, and in its sovereign capacity, it can authorize its inhabitants to divert and appropriate all the waters of the Arkansas River within the boundaries of said State, leaving none thereof to flow into the State of Kansas for the use of said State or its inhabitants, or for the use of the United States, notwithstanding said State of Kansas or its inhabitants, or the United States may have previously made appropriations of water from said river in Kansas and used said waters continuously since said appropriations were made,

in the reclamation and irrigation of lands in said State, or for any lawful and beneficial purposes. This contention on the part of the State of Colorado, if sustained, would limit, by State lines, the aforesaid doctrine of prior appropriation, as applied to interstate streams; would permit said State to assert an absolute dominion over and a sole ownership of the waters within said State flowing within the natural beds of the Arkansas River and other interstate streams; would allow it to authorize its inhabitants to appropriate and use all of said waters to the damage of prior appropriations in adjoining and other States through which said interstate streams extend, irrespective of whether such prior appropriators were individuals, States, or the United States; and would tend to destroy the navigable capacity of the Arkansas River and other interstate streams.

18. That neither the contention of the State of Colorado nor the contention of the State of Kansas is correct; nor does either contention accord with the doctrine prevailing in the arid region in respect to the waters of natural streams and of flood and other waters. That either contention, if sustained, would defeat the object, intent, and purpose of the Reclamation Act, prevent the settlement and sale of the arid lands belonging to the United States, and especially those within the watershed of the Arkansas River west of the ninety-ninth degree west longitude, and would

otherwise work great damage to the interests of the United States.

19. That the passage of the Reclamation Act is the first direct and positive declaration of the intention of the Congress of the United States to undertake active operations in relation to its dominion and control over the unappropriated waters on the public domain from time to time, as feasible irrigation projects are found on any stream, which can be developed for purposes beneficial to the United States and all of the citizens thereof; and that while no definite action has as yet been determined upon with reference to the application of the terms and conditions of said act to the Arkansas River, it may be deemed desirable for the proper authorities of the United States, acting under the Secretary of the Interior, to commence operations upon said river at any time; and it therefore becomes important and necessary to determine the status of the United States and the extent and character of its interests, its powers, its control, and its rights as to the disposal of the unappropriated water of said river, at the earliest possible opportunity consistent with the progress of the case in which this petition for intervention is filed.

20. This petitioner therefore prays that it may be permitted to intervene in this case and court, and may be permitted to take proofs, examine

witnesses, and be heard in argument; and also, that this petitioner shall have such other and further relief in the premises as shall be found agreeable to equity and good conscience.

P. C. KNOX,
Attorney-General.

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